the appellant should pay the respondents' costs before the Board.

Appeal dismissed.

Solicitors: *Linklaters & Paines; Graham Page & Co.; R. R. Chelliah Bros.*

SINGAPORE REPORTS

ASHOKA TRADERS v. GOBIND P. VASANDANI

[C.A. (Wee Chong Jin C.J., Chua and Choor Singh JJ.) November 9, 1971]

[Singapore — Civil Appeal No. 17 of 1971]

Debtors — Arrest — Security — Rescission of order for — Debtors Act (Cap. 19, 1970 Ed.), ss. 13 and 16.

This was an application by the defendant/respondent under section 16 of the Debtors Act for an order to rescind an order of court made on March 4, 1971, and to release the security given by the defendant.

On March 4, 1971, an order was made, pursuant to an application made by the plaintiffs/appellants under section 13 of the Debtors Act, in pursuance of which the defendant/respondent was arrested and ordered to furnish security in the sum of $10,845.66. The security was duly given and the defendant/respondent released.

It was not disputed that the defendant/respondent was an Indian national, that he was ordinarily resident in Indonesia, and that he carried on business as a textile merchant in Djakarta. The evidence showed that the purpose of his visits to Singapore was for buying merchandise for his business in Djakarta. The purchases have all been on credit and the defendant stated that he was indebted to several firms in Singapore, including the plaintiffs.

Tan Ah Tah J. held, allowing the defendant's application, that the plaintiffs had failed to make out a case for the arrest of the defendant because (a) the defendant was not carrying on business in Singapore, and (b) the defendant had, in the circumstances of this case, no intention to prejudice the plaintiffs, or to avoid any process of the court, or to obstruct or delay the execution of any judgment made against him. On appeal by the plaintiffs to the Court of Appeal,

Held, dismissing the appeal: the security given by the respondent should be discharged in accordance with the judgment of the learned trial judge.

Cases referred to:-

(1) *In re Gutierrez* (1879) 11 Ch. D. 298.

(2) *Re a Debtor* [1952] 1 All E.R. 519.

COURT OF APPEAL.

David Chelliah for the appellants.

J. B. Jeyaretnam for the respondent.

In the court below *David Chelliah* appeared for the plaintiffs, *J. B. Jeyaretnam* for the defendant. The following grounds of decision were given on May 15, 1971:

Tan Ah Tah J.: On the 4th March 1971, as the result of an application made by the plaintiffs under the provisions of section 13 of the Debtors Act (Cap. 19, 1970 Ed.), Kulasekaram J. ordered, *inter alia*, that the defendant be arrested and brought before the court to show cause why he should not furnish security in the sum of $10,845.66 for his appearance and for costs. Pursuant to the said order, the defendant was arrested on the 5th March 1971 and brought before D'Cotta J., who, after hearing the arguments of counsel for the plaintiffs and the defendant, who appeared in person, ordered that the defendant be detained until such time as he should give security in the form of a banker's guarantee for the sum of $10,845.66 for his appearance and for costs. The security was duly given and the defendant was released. He now makes an

application through his counsel under section 16 of the Debtors Act for an order to rescind the order of court made on the 4th March 1971 and to release the security given by the defendant.

The relevant portion of section 13(1) of the Debtors Act reads as follows: —

"13.(1) If at any stage of any action, other than an action for the possession of immovable property, against a defendant who carries on business or ordinarily resides within the jurisdiction, the plaintiff satisfies the court or a judge by evidence upon oath that he has a good cause of action against the defendant, and that the defendant, with intent to prejudice the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any judgment that may be made against him —

(a) has absconded or left Singapore; or

(b) is about to abscond or leave Singapore; or

(c) has disposed of, or removed from Singapore his property or any part thereof,

the court or judge may issue an order to arrest the defendant and bring him before the court or a judge to show cause why he should not furnish security for his appearance."

It is not disputed that the defendant is an Indian by nationality, that he is ordinarily resident in Indonesia and that he carries on business as a textile merchant under the name and style of Gobind Pursooman at 163-A Pasar Baru, Djakarta. The evidence on record shows that the defendant has made frequent and regular visits to Singapore for the purpose of buying merchandise for his business in Djakarta. He has purchased merchandise from several firms in Singapore including the plaintiffs. The purchases have all been on credit and the defendant states that he is indebted to several firms in Singapore including the plaintiffs.

The affidavits filed on behalf of the plaintiffs have revealed only one transaction between the defendant and the plaintiffs in which another firm in Singapore was involved. It is stated in paragraph 10 of the affidavit of P. G. Khemani filed on the 25th March 1971 that, pursuant to express directions given by the defendant on the 30th July 1970, the plaintiffs delivered some material to a firm carrying on business under the name of Himatsing & Co. at 50-B Market Street, Singapore and that this firm sent a cheque for the sum of $5,427.54 to the plaintiffs. This was therefore one isolated transaction involving another firm in Singapore in the course of dealing between the defendant and the plaintiffs which otherwise consisted of purchases of merchandise by the defendant from the plaintiffs for sale by the defendant's firm in Djakarta.

In my opinion, the defendant is a merchant who is carrying on business in Djakarta. It is true that a merchant can carry on business in two or more countries, but in the circumstances of this case, it would be wrong to say that he was carrying on business in Singapore. In my view, the purchasing of goods in Singapore for sale by the defendant's firm in Djakarta does not mean that the defendant was carrying on business in Singapore. On this ground alone, the plaintiffs have, in my opinion, failed to make out a case for the arrest of the defendant.

There is however another point which I must deal with and that is the question of the intention of the defendant when he was preparing to leave Singapore. As I have stated, the defendant is ordinarily resident in Indonesia and in fact he has a business in Djakarta. The facts on record show that he was intending to return to Djakarta, the city in which he resides and also carries on his business. In my view, they do not show any intention on his part to prejudice the plaintiffs, or to avoid any process of the court, or to obstruct or delay the execution of any judgment made against him. The fact that he offered to pay his debt to the plaintiffs by monthly instalments of $100 does not go to prove that he had any of such intentions.

It is I think relevant to refer to the case of *Ex parte Gutierrez*.[1] *In re Gutierrez*,[1] the headnote to which reads as follows: —

"When a debtor's summons is issued against a foreigner, who is in England for a merely temporary purpose, and he then prepares to return home, there is no presumption (as there might be in the case of a domiciled Englishman going abroad) that he is going away with the intention of avoiding payment of the summoning creditor's debt."

The case was cited in a judgment of the Court of Appeal in England in *Re a Debtor*[2] and I think it can be said that it was cited with approval.

The two cases to which I have just referred are cases concerning the law of bankruptcy. However, they deal with the principles to be considered in ascertaining the intention of a foreigner who is returning to his own country. In the present case the defendant is of course not returning to his own country, but he is returning to the country where he resides and carries on his business.

I am not saying that the decisions in the two cases conclude the present case in the defendant's favour. Each case under the Debtors Act depends upon its own facts. On the facts of the present case, I am of the opinion, as I have stated, that the defendant had no intention to prejudice the plaintiffs, or to avoid any process of the court, or to obstruct or delay the execution of any judgment made against him. This is an additional ground for holding that the plaintiffs have failed to make out a case for the arrest of the defendant.

In the result, there will be an order that the order of court made on the 4th March 1971 be rescinded and that the security given by the defendant be delivered to him or his solicitors. The plaintiffs will pay the defendant's costs of this application fixed at $100.

From the above decision the plaintiffs appealed to the Court of Appeal.

Wee Chong Jin C.J., (delivering oral judgment of the court): The facts as set out in the judgment of Mr. Justice Tan are complete, complete in the sense that they set out all the material facts which are necessary for the decision of the matter before us We agree entirely with the whole of the judgment of Mr. Justice Tan. In the circumstances the appeal is dismissed with costs.

The security given by the respondent is to be discharged in accordance with the judgment of Mr. Justice Tan. Security for costs to be paid out to the respondent.

Appeal dismissed.

Solicitors: *Chelliah & Co.; J. B. Jeyaretnam & Co.*